

SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

Date: August 16, 1994

Honorable	DAVID A. HOROWITZ	, Judge	S. ROBLES	, Deputy Clerk
2	C. AGUIRRE	, Deputy Sheriff	LINDA NISHIMOTO #9147	, Reporter
		, C.S.L.		, E/R Monitor

BC052395

(Parties and Counsel checked if present)

CHURCH OF SCIENTOLOGY, ETC

Counsel for Plaintiff

MICHAEL LEE HERTZBERG (x)  
LAURIE J. BARTILSON (x)

RECEIVED

AUG 17 1994

VS

HUB LAW OFFICES

GERALD ARMSTRONG, ET AL

Counsel for Defendant

FORD GREENE (x)

NO LEGAL FILE

NATURE OF PROCEEDINGS:

**MOTION BY CROSS-DEFENDANT, CHURCH OF SCIENTOLOGY INTERNATIONAL, FOR SUMMARY ADJUDICATION OF THE SECOND AND THIRD CAUSES OF ACTION OF THE CROSS-COMPLAINT;**

Motion for Summary Adjudication of a Cause of Action (SACA) GRANTED. No triable issues of material facts. The 2nd and 3rd Causes of Action have no merit. CCP 437c(f)(1).

3rd Cause of Action - Breach of Contract.

Undisputed Facts: #1-9, essentially Undisputed, Cross-Defendant has accurately described the provisions of the Agreement; #10, not sufficiently disputed, Undisputed; #11, Undisputed; #12, no sufficiently disputed, Undisputed; #13, Undisputed; #14, Undisputed; #15, not sufficiently disputed, Undisputed; #16, Undisputed.

The Agreement terms are clear and unambiguous. Cross-Complainant understood the terms and signed it. The duties and obligations of the Agreement are clearly stated. "Mutuality" and "reciprocal" duties cannot be read into the unambiguous terms of the Agreement.

There are no provisions in the Agreement prohibiting the Cross-Defendant from referring to Cross-Complainant with the press or in legal pleadings or declarations. Cross-Complainant's beliefs as to what the Agreement should have said, it's validity, or what his attorney said or did to him are not relevant. The Agreement itself acknowledges that no agreements or understandings have been made among the parties aside from those set forth in the Agreement.

2nd Cause of Action - Abuse of Process.

Undisputed Facts: #17, not sufficiently disputed, Undisputed; #18, not sufficiently disputed, Undisputed; #19, Disputed; #20, Disputed, not material; #21, not sufficiently disputed, Undisputed; #22, Undisputed; #23, Disputed as to time discovered by Church counsel; #24,

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Counsel for  
PlaintiffMICHAEL LEE HERTZBERG (x)  
LAURIE J. BARTILSON (x)

VS

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Counsel for  
Defendant

FORD GREENE (x)

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disputed as to motivation, otherwise Undisputed; #25, not sufficiently disputed, Undisputed; #26, Undisputed; #27, disputed as to word "further", otherwise Undisputed; #28, Disputed, but not material; #29, Undisputed; #30, Undisputed that Marin Court granted a motion to Transfer; #31, Undisputed, except for term "irreparably harmed; #32, Undisputed; #33, Undisputed; #34, not sufficiently disputed, Undisputed; #35, Undisputed.

A One Year Statute of Limitations applies to an Abuse of Process cause of action. Code of Civil Procedure Section 340. Conduct allegedly occurring prior to July 22, 1991 is precluded by the one year Statute. Conduct alleged in paragraphs 13-24, 26 and 27, 29 and 30, 33-38, 40, 43-48 and para 57 are alleged to have occurred before 7/22/91 and are time barred.

The alleged conduct constituting "abuse of process" contained in paragraphs 49, 51, 52 and 55 does not constitute such abuse of process. That is, there are no allegations concerning the abuse of court process which constitutes a cause of action.

Communications with "some relation" to judicial proceedings have been absolutely immune from tort liability by the privilege codified as section 47(b). Albertson v. Raboff.

The alleged conduct of bringing suit, contained in paragraphs 53 and 54, is not sufficient to state a cause of action for "abuse of process. The filing or maintaining of a lawsuit cannot support a claims for abuse of process. The filing of a suit to enforce the Settlement Agreement cannot support claims for abuse of process.

The conduct alleged in para 50, ie, the filing of a complaint and the use of a declaration speaking of Cross-Complainant, does not constitute abuse of process and is privileged.

Paragraph 52 alleged conduct relating to declarations filed in a case in which the Cross-Complainant is not a party. Such conduct does not constitute abuse of process and is privileged.

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PlaintiffMICHAEL LEE HERTZBERG (x)  
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Defendant

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## NATURE OF PROCEEDINGS:

MOTION FOR SUMMARY ADJUDICATION OF SECOND AND THIRD CAUSES OF ACTION OF THE CROSS-COMPLAINT OF GERALD ARMSTRONG, GRANTED.

David A. Horowitz

DAVID A. HOROWITZ, JUDGE

This is the order called for by Code of Civil Procedure Section 437c(f) and Code of Civil Procedure Section 437c(g). No other written order is required.

A copy of this order is sent this date via U.S. Mail addressed as follows:

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